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 49th day (waived)..... 6/3/2003
 Staff..... S.Craig
 Staff report.....5/22/2003
 Hearing date... ..6/11/2003

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal number.....**A-3-CAP-03-052; New Brighton State Beach Rehabilitation Project**

Applicant.....California Department of Parks & Recreation; Attn: Mr. David Vincent

AppellantRichard Hoffman

Local GovernmentCity of Capitola

Local Decision.....Approved with conditions (March 27, 2003)

Project LocationNew Brighton State Beach, 1500 Park Avenue, Capitola (Santa Cruz County)
 (APN 036-201-17)

Project Description.....Add 11 individual campsites and 5 group campsites, add new restroom building, improvements to 71 existing campsites, replace three existing restroom buildings, improve beach access and other trails, improve park road circulation, construct entrance area improvements, convert residential building to visitor center, install drainage and erosion control improvements, etc. (see Section 4C for a more detailed project description).

File Documents.....City of Capitola Certified Local Coastal Program (LCP); City of Capitola Coastal Development Permit Application File 02-059; Initial Study and Mitigated Negative Declaration for the New Brighton State Beach Campground and Day-Use Facilities Rehabilitation Project.

Staff Recommendation...**No Substantial Issue**

EXECUTIVE SUMMARY

The City of Capitola approved rehabilitation and expansion of the New Brighton State Beach campground at 1500 Park Avenue (see Exhibit 1 for location map). The project will result in campground and day-use facility improvements, increased campground capacity and increased level of campground services, circulation improvements, and improvements to trails. The campground will be closed for ten months during construction of the improvements. Beach day use facilities, including picnic areas, beach parking, and trails from Park Avenue to the beach, will remain open during construction.

The Appellant contends that: 1) the City did not adequately notify him regarding the Planning Commission



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public hearing; 2) work on the project has proceeded prior to permit issuance and prior to completion of a nesting raptor study; 3) the project may ultimately limit the availability of tent camping sites in favor of RV camping sites; 4) the park closure during construction will result in a negative impact to public access; 5) closure of the waste dumpsite during construction will negatively impact RV campers, and; 6) tree removal has taken place prior to issuance of the CDP.

These contentions do not raise a substantial issue of conformity of the approved project with the certified LCP and the public access policies of the Coastal Act. First, the Appellant received effective notice because he was involved in the process at the local level and appealed the Planning Commission's approval to the City Council. In addition, recent work that the Appellant asserts was done in the park is not part of the project that is the subject of this appeal, but is instead regular maintenance, which is exempt from coastal development permit requirements. Also, all renovated existing and new camping sites will be available for both tent campers and RV campers. Moreover, because the campground will be closed during construction, there is no obligation for State Parks to provide a sewage dump service during that time. Furthermore, although the *campground* will be closed for ten months during construction of the project, the *beach day use facilities* (beach, beach parking, beach picnic areas, trail to beach) will remain *open* to the public. Closure of the campground during construction is necessary to ensure public safety and to minimize construction time and cost. Finally, the majority of the trees removed had fallen during the severe storms of the winter of 2002/2003. A CDP is not required to remove fallen trees.

Staff recommends that the Commission, after conducting the public hearing, determine that **no substantial issue** exists with respect to this project's conformance with the certified City of Capitola Local Coastal Program (LCP) and declines to take jurisdiction over the coastal development permit for the project.

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- Exhibit 1: Location Map
- Exhibit 2: Appeal Text
- Exhibit 3: City of Capitola's Findings & Conditions
- Exhibit 4: Project Plans
- Exhibit 5: Negative Declaration Mitigation Measures
- Exhibit 6: Shoreline Access Map
- Exhibit 7: Alternate Dump Stations
- Exhibit 8: Zoning Ordinance Section 17.46.050(D)
- Exhibit 9: State Parks Letter

1. SUMMARY OF APPELLANT'S CONTENTIONS

Mr. Richard Hoffman contends that: 1) The City of Capitola did not notify him appropriately regarding the public hearing at the Planning Commission; 2) the project may be the first phase of a multiphase project that would transform the park from one that primarily serves tent campers to one that primarily serves recreational vehicles; 3) the entire park, including day use areas and the campground, will be closed during the renovation, resulting in a negative impact to public access; 4) work is currently being done on the project in advance of permit issuance under the guise of "regular maintenance," which should be subject to a nesting raptor study; 5) the waste dumpsite will be closed during renovation, negatively impacting RV campers from other state parks in the area that do not have waste dump access, and; 7) tree removal has been done prior to issuance of the required CDP. Please see Exhibit 2 for full text of the appeal.

2. APPEAL PROCEDURES

A. Filing of Appeals

On March 27, 2003, the City Council of Capitola approved the proposed project subject to multiple conditions (see Exhibit 3). Notice of the City Council's action on the CDP was received in the Commission's Central Coast District Office on April 1, 2003. The Commission's ten-working day appeal period for this action began on Wednesday, April 2, 2003 and concluded at 5:00 P.M. on Tuesday, April 15, 2003. One valid appeal was received during the appeal period.

In accordance with the Commission's regulations, staff notified the City of Capitola of the appeal and requested all relevant documents and materials regarding the subject permit, to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. Section 13112 of the Commission's regulations provides that upon receipt of a notice of appeal, a local government shall refrain from issuing a coastal development permit (CDP) and shall deliver to the Executive Director all relevant documents and materials used by the local government in consideration of the CDP application. The City permit file information was received on April 28, 2003.

Pursuant to Section 30261 of the Coastal Act, the appeal hearing must be set within 49 days from the date that an appeal is filed. The 49th day from the appeal filing date was June 3, 2003. On April 22, 2003, the Applicant's representative waived the Applicant's right for a hearing to be set within the 49-day period, to allow Commission staff sufficient time to review the project information and the Appellant's



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contentions.

B. Appeals Under the Coastal Act

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. The project is appealable because it is located between the sea and the first public road paralleling the sea, is within 300 feet of the top of the seaward face of a coastal bluff, and is a major public works project.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the approved development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. Therefore, the standard of review is consistency with the LCP and the public access policies of the Coastal Act.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

3. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-3-CAP-03-052 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of **No Substantial Issue** and the adoption of the following resolution and findings, and the local action will become



final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. **A-3-CAP-03-052** presents no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

4. RECOMMENDED FINDINGS AND DECLARATIONS

A. Project Location

New Brighton State Beach is located on the central California coast, along Monterey Bay, in the City of Capitola, in Santa Cruz County (see Exhibit 1). The 94-acre State Park unit contains developed campgrounds (115 sites) and day-use facilities (e.g., picnic areas and beach parking), and provides access to New Brighton State Beach. The park includes a variety of natural habitat communities, such as northern coastal scrub, central coast riparian forest, coast live oak woodland, and ocean/coastal strand.

B. Background & Need for the Project

New Brighton State Beach is one of the most heavily visited state park units on the central coast of California. It was originally developed between 1948 and 1950. In 1998/99 (the most recent years for which figures are available), approximately 270,000 day-use visitors and 128,000 overnight campers visited the unit. Many of the campground facilities are relatively old and substandard by current guidelines and regulations. They are also deteriorated as a result of intensive use over the past 50 years. Three of the restrooms are old, expensive to maintain, difficult to clean, and do not meet disabled access requirements and are thus in need of complete replacement. The existing campsites continue to deteriorate and many need new furniture (e.g., picnic tables, BBQs) and paving repairs. The campground facilities do not meet current user demands in terms of capacity or level of service. The demand for camping far exceeds the current capacity at New Brighton State Beach. Additional campsites could reliably be filled throughout the year. In addition, there is a demand for improved water and electrical service for existing campsites, which would stimulate off-season use. Finally, the RV sewage dump station serving the park is inadequate to serve existing needs.

Internal vehicle circulation needs to be improved to eliminate congestion and conflicts between users. The park entrance and visitor registration facilities are inadequate to handle current visitor demands. The existing entrance road does not provide adequate parking and is subject to flooding in places. During peak periods, persons in vehicles wanting to check into the campground create long delays and cause traffic to back up onto the public road. In addition, the existing entrance station is too small and does not provide adequate security for State Parks' computerized registration process.

Campground circulation also needs improvement. The current campground loop road system needs to be reconfigured to meet current demands and to address safety issues within the unit.



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The beach access trail and stairway and other park trails are also in need of improvement. The existing beach access trail from the campground is subject to major bluff erosion and storm damage, necessitating periodic replacement and repairs. The bluff trail currently provides the only direct walking access from the campground to the beach.

Please see Exhibit 9 for a letter from State Parks that describes the need for the project.

C. Project Description

The City-approved project will renovate and expand the existing campground and associated facilities (see Exhibit 4 for project plans) with the following improvements:

Campground and Day-Use Facility Improvements

- Replace three existing restroom buildings in campground to add showers to the restrooms and to meet ADA (Americans with Disabilities Act) standards (the restroom shown in Exhibit 2, pg. 9, which the Appellant claims will be removed, was built in the 1980s and will not be removed as part of this project);
- Install new camping furniture (tables, campstoves, fire rings) at 17 existing campsites;
- Install signs, fencing, and displays (where appropriate).

Capacity/Level of Service

- Construct 11 new campsites with water and electricity hookups;
- Develop 5 group campsites, which can be converted to 15 individual campsites as necessary;
- Construct new restroom building with showers to accommodate the new campsites;
- Construct new campground loop road to serve new campsites in central campground area;
- Convert 7 standard campsites to ADA campsites;
- Convert a vacant former park residence to an interpretive center/museum with parking for up to 8 vehicles;
- Add a second bay to the existing single bay sanitary dump station;
- Develop a second campground host site;
- Remove one of the park roads that traverses the middle of the campground and reconfigure the campsites in that area for better circulation and reduction of paved area;
- Re-stripe and landscape the existing day-use parking lot with modifications to better accommodate overflow recreation vehicle camping (day-use capacity will remain 235 cars).

Circulation Improvements

- Improve entrance road to two lanes in and one lane out (currently one lane in each direction);
- Construct new entrance station with restroom;
- Improve drainage on entrance road, including culvert improvements;
- Realign (regrade/reshape) parking spurs at 54 existing campsites;



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- Remove unneeded asphalt paving along campground loop roads by reducing width of roads and removing the center roadway in Camp Loop “B;”
- Rehabilitate existing park office and provide additional parking for camping check-in and checkout;

Beach Access/Trails

- Install/replace steps and treads on existing beach access stairway and provide soil stabilization and erosion control throughout the stairway zone;
- Reroute trails; install landscaping and erosion control devices along trails.

The project involves the removal of 16 coast live oak trees that are less than two inches in diameter and the removal of 40 coast live oak trees that are greater than two inches in diameter (12 of these 40 trees are six inches or greater in diameter). Coast live oak trees will be replaced at a replacement rate of 5:1 for loss of trees that are two inches or greater in diameter and 1:1 for trees that are less than two inches in diameter, with a planned success rate of at least 80% five years after planting. This is consistent with California Department of Fish and Game’s “Oak Protection Guidelines” (please see Exhibit 5 for the Negative Declaration’s required mitigation measures).

In addition, the project would remove approximately ten Monterey pine trees. These trees will not be replaced because they are not native to the site.

Several small wetlands are found within the campground area. A wetland delineation was done and reviewed by Coastal Commission biological staff. All new development adjacent to wetlands will be set back at least 35 feet from these sites, consistent with the City of Capitola LCP’s wetland setback requirements and acceptable to Coastal Commission biological staff.

D . C i t y A c t i o n

On February 20, 2003 the City of Capitola Planning Commission held a public hearing and unanimously approved a coastal permit for the renovation and expansion of the campground facilities at New Brighton State Beach. Two appeals were filed of the Planning Commission’s approval (one was later withdrawn) and the City Council held a hearing on the appeal on March 27, 2003. At that hearing the City Council denied the appeal and upheld the Planning Commission’s approval of the State Park rehabilitation project (see Exhibit 3 for City’s findings and conditions of approval).

E . S t a n d a r d o f R e v i e w

The City of Capitola has a certified Local Coastal Program (LCP). The standard for review of coastal permits in the City of Capitola is the certified LCP, and for projects located between the first public road and the sea, such as this one, the access and public recreation policies of the Coastal Act as well.



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5. SUBSTANTIAL ISSUE ANALYSIS

A. Public Access

The Appellant has raised a number of issues relevant to the project. The access issues raised correspond to LCP or Coastal Act policies, while other issues are more general in nature and do not correlate to the LCP or, in some cases, to the City-approved project. The Appellant's contentions regarding public access are addressed in this section. More general contentions that do not raise LCP issues for the project are discussed in sections C and D below. Applicable Coastal Act Public Access policies include:

Coastal Act Section 30210: *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Coastal Act Section 30213 (in part): *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

Coastal Act Section 30211: *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Applicable City of Capitola LCP policies regarding public access and recreation are as follows:

LCP Public Access Policy II-1: *It shall be the policy of the City of Capitola to provide safe and adequate pedestrian access to and along the shoreline as designated in the Shoreline Access Plan (see Exhibit 6 for Shoreline Access map).*

Future Limits on Tent Camping

The Appellant contends that the project may be the first phase of a multiphase project that would transform the park from one that primarily serves tent campers to one that primarily serves recreational vehicle campers. The Appellant provides no evidence to support this contention. Furthermore, upon completion of the park rehabilitation and expansion project, *all* campsites within the park, whether existing, renovated, or new, will be available to and adequate for tent camping *or* RV camping. The addition of a second bay to the sanitary dump station for RV campers will reduce the long lines that form at the existing single bay dump station but in no way will preclude tent camping at New Brighton State Beach.

RV Waste Dumpsite Closure During Construction

The Appellant also contends that the New Brighton State Beach RV waste dumpsite will be closed during renovation, negatively impacting RV campers from other state parks in the area that do not have waste dump access, and that there is a significant risk of unsafe and unlawful dumping if this dumpsite is closed without a replacement. The sewage dumpsite is offered as a convenience to New Brighton State Beach RV campers. The Capitola LCP does not require State Parks to provide a sewage dumpsite facility at New Brighton State Beach. In addition, other non-State Park sewage dump facilities are available in the



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area (see Exhibit 7). Also, because the campground will be closed during renovation, there is no obligation for State Parks to provide this service, which is intended for campers at New Brighton State Beach and *not* for members of the general public.

Park Closure

The Appellant contends that the entire park, including day use areas and the campground, will be closed during the renovation, resulting in a negative impact to public access. Initially the rehabilitation project was larger in scope and did include closure of the entire park, including the parking and day use areas associated with the beach. The project has been scaled back in scope to that described in section 4C above. Now only the campground and associated picnic areas, restrooms, etc., will be closed for the duration of construction, which should be completed by late spring 2004. The beach parking areas and beach day-use facilities, including restrooms and picnic areas, will remain open throughout construction of the project, consistent with Coastal Act Section 30211 and LCP Public Access Policy II-1. State Parks will have a portable entrance kiosk in use for beachgoers while the main entrance kiosk is being redeveloped.

Closure of the campground for up to ten months during construction is necessary consistent with public safety, minimizing the closure period as much as possible, and ensuring prudent use of public funds. Specifically, State Parks and the project consultants did consider phasing the work to maintain some open campsites during construction. It was determined, however, that doing so would be inconsistent with public safety and thus inconsistent with Coastal Act Section 30210, given the possible interactions between park users (which include small children) and heavy equipment operations. In addition, given that the campground is relatively small in size, any major construction in any part of the park would negatively affect the public's camping experience due to noise and visual disturbance. Finally, phasing the project would increase the time needed for construction from ten months to 13-15 months because phasing would slow the construction for a number of reasons: 1) Demolition and required setup would have to occur for each phase; 2) Construction fencing would need to be put up and maintained for each phase; 3) Public safety measures would need to be developed and maintained for each phase, and; 4) Phasing of the demolition and rebuilding of three restroom buildings would require additional time because specialty contractors would need to be rehired several times over the course of the project, instead of just completing the restroom demolitions/rebuilding in one pass. State Parks and the project consultants estimated that phasing the project to keep some campsites open during construction would result in an additional cost of approximately 30 percent for the project.

State Parks has made a substantial effort to organize the project in a manner that will minimize closure of the campground. Nonetheless, the closure of the New Brighton State Beach campground will reduce the number of available camping sites in the State Parks Santa Cruz District for approximately ten months. However, given the high intensity of public use that park has undergone throughout its 50+-year existence and the woeful condition of many of the facilities (e.g., restrooms), a ten-month closure is reasonable because the project will increase the number of available campsites for future use, consistent with Coastal Act Section 30213, and enhance the amenities of the park (restrooms, trails, park furniture) for future users. Also, within the Santa Cruz District of State Parks there are a number of other parks in which



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camping is allowed, including Portola Redwoods, Big Basin Redwoods, Castle Rock (hike in only), Henry Cowell, Seacliff, Sunset State Beach, Manresa State Beach, and Nisene Marks (hike in only). Of these parks, Portola Redwoods, Sunset State Beach, Big Basin, Henry Cowell, and Seacliff allow RV and tent camping. In addition, according to State Parks staff, campgrounds at Henry Cowell State Park and Manresa State Beach, which are usually closed from November through February, will remain open when construction is taking place at New Brighton State Beach. Some of Sunset State Beach's campsites are also usually closed during the winter months, but State Parks has determined that all of Sunset State Beach's campsites will remain open from November through February when New Brighton State Beach is closed. This will provide for additional camping options during a portion of the ten months when New Brighton State Beach is closed.

Public Monitoring of Construction

The Appellant contends that because the campground will be closed to the public during construction, that there will be no opportunity for the public to observe whether or not there is adherence to the conditions of the Negative Declaration. The LCP does not include any policies or implementing ordinances that provide for public observance of construction activities. The City of Capitola will issue a coastal development permit for the project and will have the responsibility for performing building inspections during construction and ensuring condition compliance. Thus, determination that the project is in compliance with the plans and the conditions of approval lies with the City and not the general public.

Conclusion

In conclusion, State Parks will continue to provide for both tent and RV use at New Brighton State Beach upon completion of the campground rehabilitation project. Other sewage dump facilities are available in the area, and State Parks is under no obligation to keep open the New Brighton dump facility while the campground is closed for renovation. In addition, the beach and associated day use facilities will remain open to the public while the campground is closed. Furthermore, closure of the campground during construction is necessary to maintain public safety and to minimize construction time and cost. Also, additional camping facilities are located within the Santa Cruz District of State Parks. State Parks will keep additional campsites (that would normally be closed) at other parks open between November and February when the New Brighton State Beach campground is closed for construction. Finally, the City of Capitola will perform the appropriate building inspections during construction. Therefore, the appeal raises no substantial issue in regard to conformity of the approved campground rehabilitation project with the public access policies of the Coastal Act and the certified City of Capitola LCP.

B . N o t i f i c a t i o n

The Appellant also raises procedural issues regarding public notification of local public hearings concerning the project.

City of Capitola Zoning Ordinance 17.46.080(C) states:

C. Hearing Notice. Not less than ten calendar days nor more than forty-five calendar days prior to a public hearing, the city shall send notice by first class mail to the property owner or duly authorized agent, to all city libraries to be posted or kept in a public file, to a



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newspaper of general circulation, to all property owners and residents within one hundred feet of the project site, the California Coastal Commission, and to all other persons who request such notice. In addition, a notice will be posted and maintained on the project site by the applicant. Failure to adequately post or maintain the notice shall be cause for continuance of the hearing.

Faxed Letter Regarding the Project

The Appellant contends that because State Parks faxed a letter to the City of Capitola Planning Department the day of the Planning Commission hearing (see Exhibit 2, pg. 6), that this demonstrates that adequate public notice regarding the project was not given. The letter in question is not a notice but rather a request that the Planning Commission hear and approve State Parks' application regarding the renovation and expansion of New Brighton State Beach campground. Applicants often contact a City planning official regarding their project, including on the day of the hearing, to urge support for their project. This advocacy is not any kind of notice. Thus, this contention has no relevance to proper noticing.

Planning Commission Public Hearing

The Appellant contends that the City of Capitola did not notify him appropriately regarding the public hearing at the Planning Commission and as such he did not attend the hearing. The Appellant states that he appeared in person at the City of Capitola Planning Department and requested such notification, left his business card and was told by City staff that he would be notified. City staff states that the file contains no evidence that Mr. Hoffman came in to request notice of the Planning Commission hearing. Additionally, the City states that because Mr. Hoffman does not reside in Capitola and did not request notice in writing, that the City was not obligated to provide him with notice of the Planning Commission hearing. Commission staff notes that Zoning Ordinance 17.46.080(C) does not require that requests to receive notice must be in writing and states, "*the city shall send notice by first class mail to ... all other persons who request such notice,*" regardless of whether they are residents of the City or not. Even so, Mr. Hoffman received effective notice because he clearly was involved in the process at the local level, given that he appealed the Planning Commission's approval to the City Council. The City Council heard Mr. Hoffman's appeal and at that time unanimously upheld the Planning Commission's decision to approve the campground improvement project. Therefore, the appeal raises no substantial issue in regard to appropriate noticing at the local level.

C . R e g u l a r M a i n t e n a n c e

This section addresses contentions made by the Appellant that are more general in nature and do not correlate to the City-approved project that is the subject of the appeal.

The Appellant contends that work on the City-approved project is currently being done in advance of coastal development permit issuance under the guise of regular maintenance. City of Capitola LCP Zoning Ordinance Sections 17.46.050(D)(E) provide for exemptions from coastal development permit requirements for repair and maintenance activities and utility connections and state, in part:

17.46.050. The following types of development are exempt from the coastal permit requirement pursuant to Coastal Act Section 30610. Requirements for any other type of



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permit are unaffected by this section...

D. Repair or maintenance activities that do not result in addition to, or enlargement or expansion of, the object of those repair or maintenance activities, except that because they involve a risk of substantial adverse environmental impact a coastal development permit shall be required for any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall or similar work... (see Exhibit 8 for entire language of Section 17.46.050(D)).

E. The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this chapter; provided, however, that the city may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources.

The Appellant contends that recent repaving of a road within the park (adjacent to a small area of monarch butterfly habitat, the majority of which is off of State Park property; see Exhibit 2, page 10), as well as electrical work (Exhibit 2, page 11) and water main/valve work (Exhibit 2, pages 3, 4, & 11) are part of the project and have been done prior to issuance of the CDP. The Appellant also contends that this work should not have been done prior to the required nesting raptor study. The mitigated negative declaration prepared for the *project* requires preparation of a nesting raptor survey if construction or tree removal *done as part of the project that is the subject of this appeal* is proposed during raptor nesting season.

The Appellant is confusing regular maintenance work done in the park by State Parks personnel with work that will be done by an independent contractor pursuant to the City-approved project. More than 125,000 people camp yearly at New Brighton State Beach campground. Given this intense use, regular maintenance activities are necessary to maintain the park infrastructure. Commission staff toured the park with State Parks staff and visited each of the sites shown in the Appellant's photos (see Exhibit 2). The repaving of the road in question, which is for authorized State Parks vehicles only, is not part of the campground rehabilitation project (see Section 4c above for complete project description) and thus is *not part of the City-approved project that is the subject of this appeal*. Instead, this existing road was repaved as part of a regular maintenance program. Such maintenance is exempt from coastal development permit requirements under Zoning Ordinance Section 17.46.050(D). Regarding the road being adjacent to monarch butterfly habitat, the majority of the eucalyptus trees in this grove are located on private property within the unincorporated County of Santa Cruz. Also, few monarch butterflies have been coming to this grove of eucalyptus trees in recent years. According to State Parks' Senior Resource Ecologist, approximately 1% of the eucalyptus grove is habitat for roosting monarch butterflies. This area is approximately 400 feet from the closest portion of the repaved road that is on State Parks property (the remainder of the road is on private property). Also, the repaving of the State Parks portion of the road was done in February 2003, toward the end of the monarch butterflies' overwintering period. At that time, State Parks' Senior Resource Ecologist determined that, for the above-stated reasons, the repaving of the road would not impact monarch butterflies.

Similarly, the electrical box (shown in Exhibit 2 page 11) is not part of the campground rehabilitation



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project. According to State Parks staff, this electrical box has been at this location for quite some time. Additionally, its installation was exempt from CDP requirements under Zoning Ordinance Section 17.46.050(E). Regarding Exhibit 2 pages 3, 4 & 11, these water main repairs were done over a year ago as regular maintenance and also are exempt from CDP requirements under Zoning Ordinance Section 17.46.050(D). Also, the work shown in Exhibit 2 pages 3 & 11, is being done because Soquel Creek Water Company is planning to upgrade and update its water lines to the Park to increase water pressure to the Park. Thus, State Parks personnel have dug holes to identify where all of the water valves are located in anticipation of the upgrade to the water system. Digging holes to locate water valves is exempt from CDP requirements under Zoning Ordinance Section 17.46.050(D).

In conclusion, none of the above-mentioned maintenance activities are part of the campground rehabilitation project. Instead, they are regular maintenance activities that are exempt from CDP requirements. Furthermore, the LCP does not require completion of a nesting raptor study prior to regular maintenance activities. (A nesting raptor study *is* required prior to initiation of the much more intensive construction activities associated with the project. If nesting raptors are found, no construction or tree removal may occur within 500 feet of the nests until the young have fledged - see Exhibit 5, pp. 1-2). Therefore, this aspect of the appeal raises no substantial issue regarding the CDP requirements of the certified City of Capitola Zoning Ordinance.

D. Tree Removal

This section addresses contentions made by the Appellant regarding tree removal that do not correlate to the LCP *or* to the City-approved project that is the subject of the appeal.

The Appellant raises another non-related project issue regarding tree removal. Specifically, the Appellant contends that tree removal has taken place prior to issuance of the coastal development permit. During the storms of winter 2002/2003, a number of trees fell in the campground day use area at New Brighton State Beach. These trees were removed, as shown in Exhibit 2, page 3. The campground day use area serves as a picnic area/gathering place for campers. No improvements to the campground day use area, however, are planned as part of the City-approved project. Thus, the removal of these fallen trees is not part of the City-approved campground rehabilitation project that is the subject of this appeal. In addition, a CDP is not required to remove downed trees.

After the winter storms of 2002/2003, a resident of a home on the beach adjacent to State Parks property requested permission from State Parks to remove several eucalyptus trees on the bluff face, due to safety concerns (Exhibit 2, page 9). State Parks gave its permission to the homeowner and the homeowner had these trees removed. The removal of these eucalyptus trees was not part of the City-approved campground rehabilitation project and was not undertaken by State Parks.

In a letter from State Parks to a planner at the City of Capitola, State Parks states, “*There are no plans for systematic removal of the [nonnative] Monterey pines and cypresses from the New Brighton State Beach campground*” (see Exhibit 2, page 8). In the same exhibit, the Appellant contends that in the “*Original draft for the Proposed Land Use and Facilities dated October 12, 1989...a program to remove Monterey pines and reestablish native oaks and shrubs is underway.*” It is not clear what the



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“Original Draft for the Proposed Land Use and Facilities” is, but it may refer to New Brighton State Beach’s General Plan. State Parks, however, does not have a tree removal program in place now at New Brighton State Beach. In any event, whether or not there is a State Parks program underway to remove nonnative trees in New Brighton State Beach has no relevance to the current project that is the subject of the appeal.



California Coastal Commission